

11 CIV 5861

JUDGE BERMAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

MARIA GARCIA,

Plaintiff,

ECF CASE

-against-

NOTICE OF REMOVAL

RESIDENCE INN BY MARRIOTT FISHKILL,
MARRIOTT INTERNATIONAL, INC and HARD
EIGHT FISHKILL, L.P., aka HARD EIGHT
FISHKILL,

Civil Action No. _____

Defendants.

Defendants RESIDENCE INN BY MARRIOTT, LLC (Improperly named herein as RESIDENCE INN BY MARRIOTT FISHKILL), MARRIOTT INTERNATIONAL, INC and HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, through counsel, pursuant to 28 U.S.C. §§ 1332, 1441(a) and 1446 respectfully petition for the removal of this action to the United States District Court for the Southern District of New York. In support of this petition, defendants respectfully state the following:

1. This case is presently pending in New York Supreme Court, County of Dutchess, under Index Number 4469/2011. The territory assigned to the United States District Court for the Southern District of New York under 28 U.S.C. § 112 (b) embraces Dutchess County.
2. The Summons and Complaint were filed in this matter on or about July 13, 2011. An Amended Summons and Complaint were filed on or about July 18, 2011. Copies of the Amended Summons and Complaint are annexed hereto as Exhibit "A."
3. Plaintiff's complaint sounds in negligence. See Exhibit A.

4. Plaintiff alleges that as a result of defendants' actions, plaintiff suffered damages that "exceeds the monetary jurisdiction amounts of all lower Courts of the State of New York." Exhibit A, ¶ 25.

5. Plaintiff was and is a resident of the County of Orange, State of New York.

6. Defendant Residence Inn by Marriott, LLC (incorrectly named herein as "Residence Inn by Marriott Fishkill) was formed in the State of Delaware. See Exhibit B.

7. Residence Inn by Marriott, LLC is a wholly owned subsidiary of Marriott International, Inc.

8. Defendant Marriott International, Inc. was incorporated in of the State of Delaware. See Exhibit C.

9. Defendant Marriott International, Inc. is headquartered in Bethesda, Maryland and that is its principal place of business for the purposes of 28 U.S.C. § 1332. See <http://www.marriott.com/corporateinfo/boilerplate.mi>.

10. Defendant Hard Eight Fishkill, LP was formed in the State of Delaware. See Exhibit D.

11. The partners in Hard Eight Fishkill, LP are;

- a. Schuylkill LP, a Delaware limited partnership
- b. Hard Eight Fishkill Manager LLC, a Delaware limited liability company.

12. This Court has diversity jurisdiction over an action pursuant to 28 U.S.C. § 1332 between citizens of different states where the matter in controversy exceeds \$75,000.00.

13. Based upon the above, this matter meets the specifications for jurisdiction under § 1332 and removal of this matter from the Supreme Court of the State of New York, Dutchess County to this Honorable Court is appropriate.

14. Moreover, this petition is timely under 28 U.S.C. § 1446 (b) as Defendants received plaintiff's Amended Summons and Complaint on or about July 23, 2011.

15. All state-court papers served by the plaintiff on the defendants and all state-court papers served by the defendants on the plaintiff, at the time of removal, consisting of the Amended Summons and Complaint are attached.

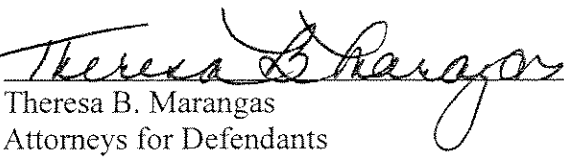
16. Defendants have not previously sought to remove this action.

WHEREFORE defendants respectfully request that this case be removed from the New York Supreme Court, Dutchess County to this Court for all further proceedings.

Dated: August 19, 2011
Albany, New York

Yours, etc.

WILSON, ELSE, MOSKOWITZ, EDELMAN & DICKER LLP

By: 
Theresa B. Marangas
Attorneys for Defendants
Residence Inn by Marriott, LLC (Improperly
named herein as Residence Inn by Marriott
Fishkill), Marriott International, Inc and
Hard Eight Fishkill, L.P., aka Hard Eight
Fishkill
677 Broadway
Albany, New York 12203
(518) 449-8893
(518)4655-2548 (fax)
File No Pending

TO: Bruce A. Schonberg
Schonberg Law Offices of the Hudson Valley, P.C.
209 Route 32
P.O. Box 217
Central Valley, New York 10917

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF **DUTCHESS**

Index No.: 4469/2011
Date Filed: July 13, 2011

-----X
MARIA GARCIA

Plaintiff(s)

**Amended SUMMONS with
NOTICE**

Plaintiff designates
Dutchess County as the
place of trial

-against-

The basis of venue is
Situs of the Occurrence

RESIDENCE INN BY MARRIOTT FISHKILL,
MARRIOTT INTERNATIONAL INC., and
HARD EIGHT FISHKILL, L.P., aka
HARD EIGHT FISHKILL,

Defendants.

Plaintiff's Residence:
27 Sommerfield Drive
Wallkill, NY 12589
County of Ulster

-----X
To the above named defendant(s)

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's Attorney(s) within 30 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Dated: July 15, 2011
Defendants' address:
RESIDENCE INN BY
MARRIOTT FISHKILL
14 Schuyler Boulevard
Fishkill, NY 12524

SCHONBERG LAW OFFICES OF THE HUDSON
VALLEY, P.C.
Attorney for Plaintiff
209 Route 32, P.O. Box 217
Central Valley, NY 10917

MARRIOTT INTERNATIONAL INC.,
14 Schuyler Boulevard
Fishkill, NY 12524

HARD EIGHT FISHKILL, L.P., aka
HARD EIGHT FISHKILL
14 Schuyler Boulevard
Fishkill, NY 12524

Notice: The nature of this action is: Negligence, Personal Injury.

The relief sought is: Money Damages.

Upon your failure to appear, judgment will be taken against you by default for a sum commensurate with the damages and injuries sustained by plaintiff, together with the costs and disbursements of this action with interest from December 13, 2008.

2011 JUL 18 PM 2:19
RECEIVED
CLERK'S OFFICE
JUL 18 2011

STATE OF NEW YORK
SUPREME COURT : DUTCHESS COUNTY

-----X
MARIA GARCIA,

Plaintiff,

-against-

COMPLAINT
Index #

RESIDENCE INN BY MARRIOTT FISHKILL,
MARRIOTT INTERNATIONAL INC., and
HARD EIGHT FISHKILL, L.P., aka
HARD EIGHT FISHKILL,

Defendant(s).
-----X

Plaintiffs, MARIA GARCIA, by her attorney, SCHONBERG LAW OFFICES
OF THE HUDSON VALLEY, P.C., as and for her Complaint, herein allege the
following:

1. That at all times hereinafter mentioned, the plaintiff was and still is
a resident of the County of Orange, State of New York.
2. That at all times hereinafter mentioned, upon information
and belief, the defendant, RESIDENCE INN BY MARRIOTT FISHKILL, is a
domestic corporation and a legal entity subject to suit.
3. That at all times hereinafter mentioned, the aforementioned
defendant, RESIDENCE INN BY MARRIOTT FISHKILL is a foreign corporation
conducting business within the State of New York and is a legal entity subject to
suit.
4. That at all times hereinafter mentioned, the aforementioned
defendant, RESIDENCE INN BY MARRIOTT FISHKILL, is a business within
New York State and as such is a legal entity subject to suit.

5. That at all times hereinafter mentioned that on or about 13th of December, 2008 the defendant RESIDENCE INN BY MARRIOTT FISHKILL, were owners of a certain commercial property location at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

6. That at all times hereinafter mentioned, the aforementioned defendant, RESIDENCE INN BY MARRIOTT FISHKILL, hereby owns, rents, leases, maintains, possesses, controls and cares for property located at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

7. That at all times hereinafter mentioned, upon information and belief, the defendant, MARRIOTT INTERNATIONAL INC., is a domestic corporation and a legal entity subject to suit.

8. That at all times hereinafter mentioned, the aforementioned defendant, MARRIOTT INTERNATIONAL INC., is a foreign corporation conducting business within the State of New York and is a legal entity subject to suit.

9. That at all times hereinafter mentioned, the aforementioned defendant, MARRIOTT INTERNATIONAL INC., is a business within New York State and as such is a legal entity subject to suit.

10. That at all times hereinafter mentioned that on or about 13th of December, 2008 the defendant MARRIOTT INTERNATIONAL INC., were owners of a certain commercial property location at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

11. That at all times hereinafter mentioned, the aforementioned defendant, HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, hereby owns, rents, leases, maintains, possesses, controls and cares for property located at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

12. That at all times hereinafter mentioned, upon information and belief, the defendant, HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, is a domestic corporation and a legal entity subject to suit.

13. That at all times hereinafter mentioned, the aforementioned defendant, HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, is a foreign corporation conducting business within the State of New York and is a legal entity subject to suit.

14. That at all times hereinafter mentioned, the aforementioned defendant, HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, is a business within New York State and as such is a legal entity subject to suit.

15. That at all times hereinafter mentioned that on or about 13th of December, 2008 the defendant HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, was the owner of a certain commercial property location at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

16. That at all times hereinafter mentioned, the aforementioned defendant, HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, hereby owns, rents, leases, maintains, possesses, controls and cares for property

located at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

17. That at all times hereinafter mentioned, the aforementioned defendant, RESIDENCE INN BY MARRIOTT FISHKILL, MARRIOTT INTERNATIONAL INC. and HARD EIGHT FISHKILL, L.P., aka HARD EIGHT FISHKILL, were responsible and bore a duty to refurbish, provide proper lighting for stairways/hallways and generally maintain the real property so as to be in safe and proper condition, including but not limited to the appropriate level of lighting and proper working lighting equipment for stairways/hallways and maintenance generally at 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York.

18. That at all times hereinafter mentioned, upon information and belief, 14 Schuyler Boulevard, City of Fishkill, County of Dutchess, State of New York was the situs of the injury herein.

19. That on or about the 13th date of December of 2008, the plaintiff, MARIA GARCIA was lawfully transversing on the aforesaid stairway or stairwell.

20. That at the aforementioned place and date, the plaintiff was caused to slip and fall, therein sustaining serious and diverse injuries.

21. The accident and injuries caused to the plaintiff were solely by and through the reckless, negligent and careless conduct of the defendants therein. That the said defendant failed to take reasonable due diligence and care and otherwise failed to properly supervise, maintain premises; the defendant caused the aforesaid real property to develop hidden and unseen dangers and

defects due to poor lighting and poor maintenance; the defendant failed to conduct adequate and proper and reasonable inspections of the said premises; the defendant failed to warn of the defects and inadequacies of the premises; the defendants failed to take precautions and safeguards necessary to protect the safety and well being of the plaintiff; the defendant was negligent, careless and reckless in allowing plaintiff to transverse the aforementioned property without the proper lighting and/or light equipment; the defendant failed to replace light bulbs or repair antiquated lighting equipment; in allowing a dangerous and defective condition to exist on the property with knowledge or in the exercise of reasonable care to have seen/known of the danger and defective condition.

That at all times hereinafter mention, the defendants negligently, carelessly and recklessly failed to take those measures and precautions that reasonably should have been made to correct, remove and warn of the existence of the aforementioned conditions.

22. That by reason of the aforesaid accident, the plaintiff, MARIA GARCIA, suffered and still suffers bodily injury, pain, discomfort, and the plaintiff became and still is sick, sore, lame and disabled and upon information and belief, his injuries are permanent.

23. Therefore, this plaintiff was been caused to seek medical aid in an attempt to alleviate her injuries and suffering.

24. That said plaintiff was unable to attend and perform her usual and customary daily activities and upon information and belief, has been permanently impaired from performing such duties.

25. The value of the within case exceeds the monetary jurisdiction amounts of all lower Courts of the State of New York.

WHEREFORE, plaintiff request judgment against the defendants in favor of the plaintiff in such amounts as may commensurate with the damages and injuries sustained by the plaintiff, together with the costs and disbursements of this action.

DATED: Central Valley, New York
July 8, 2011

Yours etc.,

SCHONBERG LAW OFFICES OF
THE HUDSON VALLEY, P.C.
Attorney for Plaintiffs
209 Route 32, P.O. Box 217
Central Valley, NY 10917
(845) 928-3030

TO: RESIDENCE INN BY MARRIOTT FISHKILL
14 Schuyler Boulevard
Fishkill, NY 12524

MARRIOTT INTERNATIONAL INC.,
14 Schuyler Boulevard
Fishkill, NY 12524

HARD EIGHT FISHKILL, L.P., aka
HARD EIGHT FISHKILL
14 Schuyler Boulevard
Fishkill, NY 12524

STATE OF NEW YORK
SUPREME COURT : DUTCHESS COUNTY

-----X
MARIA GARCIA,

Plaintiff,

-against-

ATTORNEY CERTIFICATION
Index No:

RESIDENCE INN BY MARRIOTT FISHKILL,
MARRIOTT INTERNATIONAL INC., and
HARD EIGHT FISHKILL, L.P., aka
HARD EIGHT FISHKILL,
Defendant(s).

-----X

The undersigned, an attorney duly admitted to the practice of law in the
Courts of the State of New York, affixes his signature hereto pursuant to 22
NYCRR 130-1.1-a.

The accompanying documents are so certified by his signature;

VERIFIED COMPLAINT.

DATED: Central Valley, New York
July 8, 2011

Yours truly,

SCHONBERG LAW OFFICES OF
THE HUDSON VALLEY, P.C.

By: 

Bruce A. Schonberg

STATE OF NEW YORK
SS:
COUNTY OF ORANGE

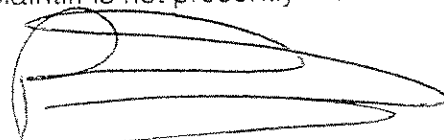
BRUCE A. SCHONBERG, being duly sworn, deposes and says that he is the attorney for the plaintiff in this action, and has offices at 209 Route 32, P.O. Box 217, Central Valley, Orange County, New York.

That he has read the foregoing, VERIFIED COMPLAINT knows the contents thereof and the same is true to the knowledge of your deponent except as to those matters alleged upon information and belief and as to those matters he believes it to be true.

Deponent further says that the source of his information and the grounds of his belief as to all matters therein not stated upon his knowledge are as follows:

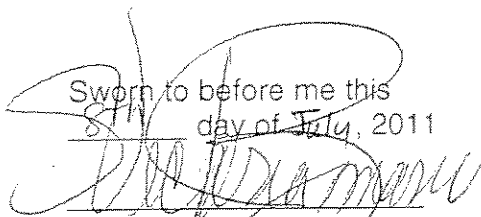
Investigations which deponent has caused to be made and reports thereon and communications had with the plaintiff.

Deponent further says that the reason why this verification is made by Deponent and not by the plaintiff is that the plaintiff is not presently within the County wherein deponent has his office.



Bruce A. Schonberg

Sworn to before me this
8th day of July, 2011



NOTARY PUBLIC
VICTORIA ROMANO
Notary Public, State of New York
No. 01RO6172346
Qualified in Orange County
Commission Expires August 6, 2011

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF DUTCHESS Index No:

=====

MARIA GARCIA

Plaintiff(s)

-against-

RESIDENCE INN BY MARRIOTT FISHKILL,
MARRIOTT INTERNATIONAL INC., and
HARD EIGHT FISHKILL, L.P., aka
HARD EIGHT FISHKILL

Defendant(s).

=====

COMPLAINT

=====

**SCHONBERG LAW OFFICES OF THE
HUDSON VALLEY, P.C.**

Attorneys for Plaintiff(s)
Post Office and Office Address, Telephone
209 Route 32, P.O. Box 217
Central Valley, New York 10917
(845) 928-3030

=====

To: Attorney(s) for Defendant

=====

Service of a copy of the within is hereby admitted.
Dated, _____

Attorney(s) for

=====

Please take notice

[] NOTICE OF ENTRY

that within is a true copy of a Decision & Order duly entered in the office of the clerk of the within named court on _____.

[] NOTICE OF SETTLEMENT

that an order _____ of which the within is a true copy will be presented for
settlement to the HON. _____ one of the judges

of the within named court, at _____

on _____ 2011 at _____

M.

Dated:

To:

Yours, etc.

BRUCE A. SCHONBERG
SCHONBERG LAW OFFICES OF THE
HUDSON VALLEY, P.C.
209 Route 32, P.O. Box 217
Central Valley, New York 10917
(845)-928-3030

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 12, 2011.

Selected Entity Name: RESIDENCE INN BY MARRIOTT, LLC

Selected Entity Status Information

Current Entity Name: RESIDENCE INN BY MARRIOTT, LLC

Initial DOS Filing Date: JANUARY 22, 2007

County: ALBANY

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED LIABILITY COMPANY

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207-2543

Registered Agent

NONE

This office does not require or maintain information regarding the names and addresses of members or managers of nonprofessional limited liability companies. Professional limited liability companies must include the name(s) and address(es) of the original members, however this information is not recorded and only available by viewing the certificate.

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
JAN 22, 2007	Actual	RESIDENCE INN BY MARRIOTT, LLC

A Fictitious name must be used when the Actual name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 12, 2011.

Selected Entity Name: MARRIOTT INTERNATIONAL, INC.

Selected Entity Status Information

Current Entity Name: MARRIOTT INTERNATIONAL, INC.

Initial DOS Filing Date: NOVEMBER 07, 1997

County: NEW YORK

Jurisdiction: DELAWARE

Entity Type: FOREIGN BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

CORPORATION SERVICE COMPANY

80 STATE ST

ALBANY, NEW YORK, 12207

Chairman or Chief Executive Officer

J W MARRIOTT JR

10400 FERNWOOD RD

BETHESDA, MARYLAND, 20817

Principal Executive Office

MARRIOTT INTERNATIONAL, INC.

10400 FERNWOOD ROAD

BETHESDA, MARYLAND, 20817

Registered Agent

THE PRENTICE-HALL CORPORATION SYSTEM, INC.

80 STATE STREET

ALBANY, NEW YORK, 12207

This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
No Information Available		

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
APR 13, 1998	Actual	MARRIOTT INTERNATIONAL, INC.
NOV 07, 1997	Actual	NEW MARRIOTT MI, INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#) [New Search](#)

[Services/Programs](#) | [Privacy Policy](#) | [Accessibility Policy](#) | [Disclaimer](#) | [Return to DOS Homepage](#) | [Contact Us](#)

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through August 11, 2011.

Selected Entity Name: HARD EIGHT FISHKILL LP

Selected Entity Status Information

Current Entity Name: HARD EIGHT FISHKILL LP

Initial DOS Filing Date: MARCH 13, 2006

County: DUTCHESS

Jurisdiction: DELAWARE

Entity Type: FOREIGN LIMITED PARTNERSHIP

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

C/O CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207-2543

Registered Agent

CORPORATION SERVICE COMPANY

80 STATE STREET

ALBANY, NEW YORK, 12207-2543

*Stock Information

# of Shares	Type of Stock	\$ Value per Share
-------------	---------------	--------------------

No Information Available

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
MAR 13, 2006	Actual	HARD EIGHT FISHKILL LP

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

[Search Results](#) [New Search](#)

[Services/Programs](#) | [Privacy Policy](#) | [Accessibility Policy](#) | [Disclaimer](#) | [Return to DOS Homepage](#) | [Contact Us](#)